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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/626,135	07/24/2003	Timothy M. Holub	Orgtnt2-4223	9351
33042	7590	06/14/2005	EXAMINER	
LEYDIG, VOIT & MAYER, LTD. (SEATTLE OFFICE) TWO PRUDENTIAL PLAZA SUITE 4900 CHICAGO, IL 60601-6780			AYRES, TIMOTHY MICHAEL	
			ART UNIT	PAPER NUMBER
			3637	

DATE MAILED: 06/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/626,135

Applicant(s)

HOLUB, TIMOTHY M.

Examiner

Timothy M. Ayres

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) 10 and 15 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 and 11-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 7/24/2003
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_

### **DETAILED ACTION**

This is a first action on the merits of application SN 10/626,135.

### ***Election/Restrictions***

1. This application contains claims directed to the following patentably distinct species of the claimed invention:

- Fig 1 shows a wire stake and a sheet metal vane is shown.
- Fig 2(a) shows a wire stake with a welded on vane.
- Fig 2(b) shows a wire stake with the wire wrapped around to create the vane.
- Fig 3 shows a wire stake with the wire wrapped around the point to create a vane/barb.
- Fig 4 shows a wire stake bent in such a way to create a backfill space.
- Fig 5(a) shows a wire stake with a sheet metal vane, which has a hole in the middle of the vane to create a backfill space.
- Fig 5(b) shows a plastic stake with a short vane and a long vane, also on the short vane is a backfill space.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, Claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Roger D. Wylie on 6/02/05 a provisional election was made without traverse to prosecute the invention of Fig 2b, claims 1-9 and 11-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 10 and 15 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Specification***

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

#### **Arrangement of the Specification**

As provided in 37 CFR 1.77(b), the titles of the specification should be without underline.

### ***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

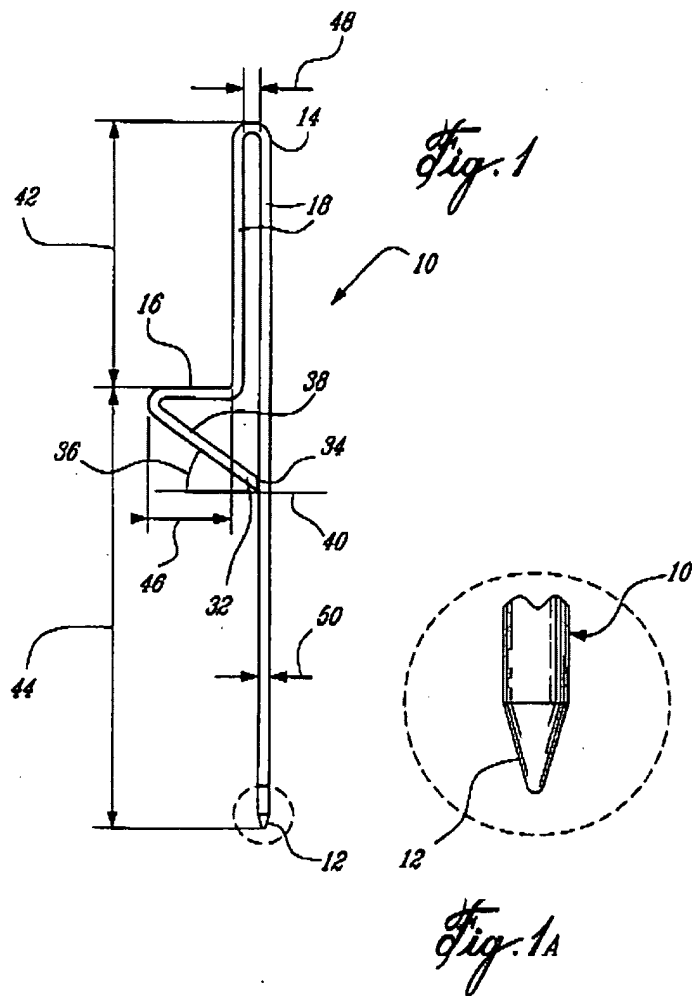
A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-9 and 11-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. Patent 6,412,748 to Girard. Girard ('748) discloses an anchoring mechanism that has a shaft (18) with a penetration end (12) and a driving end (14). The gap (48) inherently serves as attachment portion to secure objects to it. The anchoring mechanism has a short vane defined by members (38 and 16). The short vane (38,16) lies in the same plane as the shaft axis or a plane parallel to the shaft axis as shown in fig 1. The insertion edge is defined by step (38) and member (16) defines the extraction edge. Defined by those members and the shaft (10) is an open area that soil will fill into

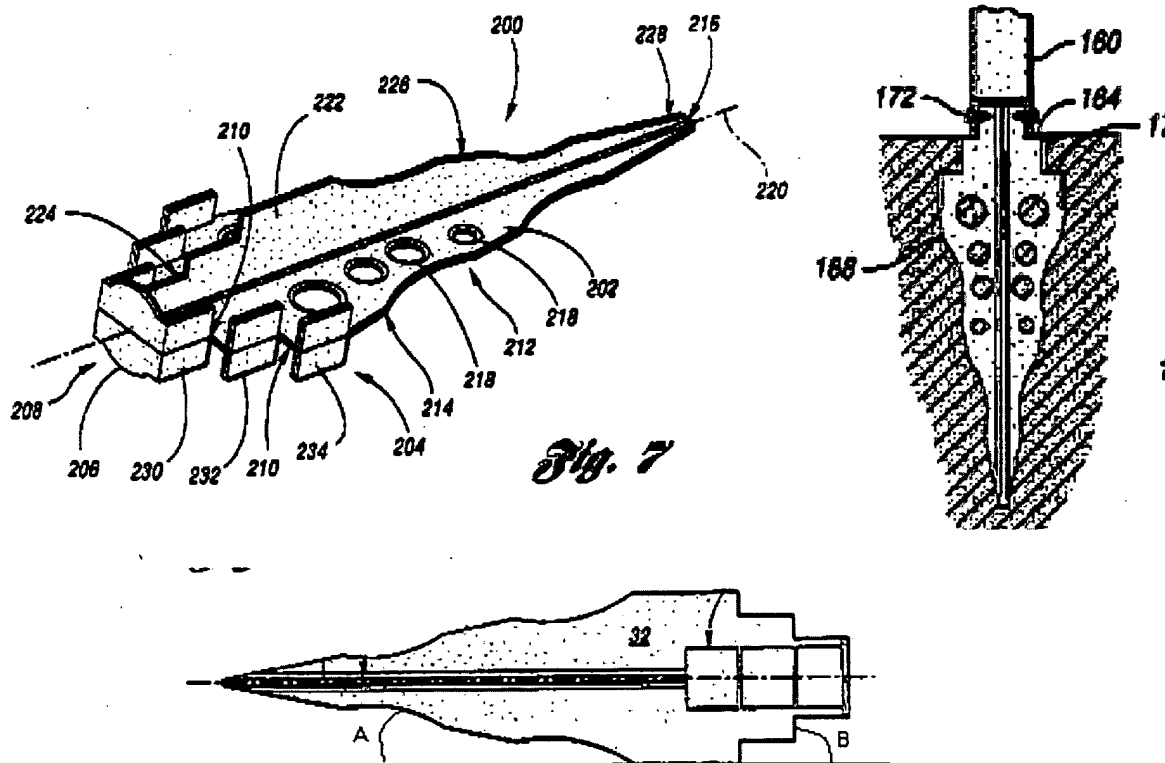
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when driven into the ground. When the anchoring mechanism is driven into the ground such that step (16) is below the surface, more force will be needed to then pull the mechanism out of the ground. Girard does not directly disclose the level to which the mechanism will be driven, but there is nothing preventing it to be driven to any depth desired. The angle of insertion (36) is disclosed to be around 30 degrees compared with the angle of extraction formed between (16) and (18) which is approximately 90 degrees thus making it easier to drive in then pull out. The entire anchoring mechanism is made from the same wire of diameter (50) in the same plane. (See line 15, col. 4)



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3. Claims 1-6 and 11 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by U.S. patent 6,401,408 to Schwartz. Schwartz ('408) discloses a plastic stake that has a shaft (222) with a penetration end (216) and a driving end (206). Surface (230) is used to drive a screw (172) in to secure another object to the stake. The planar member (202, 168) is the short vane defined with the shoulder (210,176) as the extraction edge. Holes (218) provide backfill space for soil retention. The edge on the planar member (202, 168) defined from the penetration end (216) to the first step (234) is the insertion edge. The angle from that edge to the vertical is the insertion angle (A) and has a gentle angle making it easy to drive into the ground while the angle of the extraction edge with the vertical (B), creates an angle of 90 degrees, which makes it more difficult to pull out.



***Conclusion***

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Fetterman ('443) discloses a ground stake that is made from wire that uses the backfill (5) aspect to help brace the structure. Werner ('103) discloses a ground stake device that contains a short vane (114). Otteson ('798) discloses an anchoring stake with a short vane (12). Schatz ('942) discloses a stake, which contains attachment means (30) and short vanes (40a, 40b) to grab the soil. Eck ('514) discloses a mailbox stand that contains a welded on retaining bracket. Santos ('112) discloses a curb stake, which has attachment means (33) with screw holes, and a vane (15) that extends out for stability. Danieli ('128) discloses a beach anchor that contains a shaft with a hook shape to attach rope to it and also has a planar member (25) that acts as a vane. Leever ('290) discloses a ground stake, which uses backfill holes to help retain the post in the ground.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy M. Ayres whose telephone number is (571) 272-8299. The examiner can normally be reached on Mon – Fri 8:30 – 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on (571) 272-6867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.



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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

TMA  
*TMA* 6/10/05

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*Lanna Mai*